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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
LIN 06 195 52065

Office: NEBRASKA SERVICE CENTER

Date: FEB 18 2010

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the Form I-140 petition based on a finding of marriage fraud under section 204(c) of the Immigration and Nationality Act (hereinafter, the Act). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a private household. It seeks to employ the beneficiary permanently in the United States as a home care aide under Section 203(b)(3) of the Act, 8 U.S.C. § 1153(b)(3). As required by statute, the petition is accompanied by a Form ETA 9089, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). On May 9, 2007, the director denied the Form I-140 petition based upon the determination that the beneficiary is ineligible for the classification sought based on the beneficiary's fraudulent marriage to a United States citizen and revoked the petition's approval pursuant to Section 204(c) of the Act, 8 U.S.C. § 1154(c).

The record shows that the appeal is properly filed, timely, and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

Section 205 of the Act, 8 U.S.C. § 1155, states: "The Attorney General may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under Section 205 of the Act, the BIA has stated:

In Matter of Esteimé, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

The realization by the director that the petition was approved in error constitutes good and sufficient cause for revoking the approval.

As set forth in the director's decision, the single issue in this case is whether or not the marriage bar under Section 204(c) of the Act applies to this case. On April 26, 1994 the beneficiary's United

States citizen spouse [REDACTED] filed a Form I-130, Petition for Alien Relative on behalf of the beneficiary. On that petition, the beneficiary listed [REDACTED] as a prior spouse, with the marriage ending on December 6, 1992. The record includes a divorce decree issued by the High Court of Sierra Leone, dated December 6, 1992 signed by [REDACTED]. On April 26, 1994, the beneficiary also filed a Form I-485, Application to Register Permanent Residence or Adjust Status. In an undated affidavit, the applicant's spouse [REDACTED] stated that he married the beneficiary for immigration purposes and that he wished to withdraw his application for the beneficiary. On November 18, 1994, the Acting District Director advised [REDACTED] that all action upon the petition filed April 24, 1994 has been terminated based upon his written withdrawal of that petition.

On November 4, 1996, [REDACTED] filed a second Form I-130 petition on behalf of the beneficiary and the beneficiary filed a second Form I-485 application. On August 1, 1997, the Form I-130 and Form I-485 applications were denied for failure of the beneficiary and her spouse to appear for their scheduled interviews, thus abandoning their applications.

On September 29, 1997, the beneficiary filed a Form I-360, Petition for Amerasian, Widow or Special Immigrant stating that she was the self-petitioning spouse of an abusive U.S. citizen. On September 29, 1997, the beneficiary also filed a Form I-485. On June 25, 1998 the Acting Center Director issued a notice of intent to deny the beneficiary's Form I-360. On October 15, 1998 the Center Director denied the Form I-360 filed. On December 29, 1998 and January 25, 1999 the beneficiary filed a motion to reopen and reconsider the Center Director's denial.¹ In two separate decisions, one undated and one dated February 19, 1999, the Center Director denied the beneficiary's motion to reopen or reconsider.

On March 5, 1999 the beneficiary filed a second Form I-360 stating that she was the self-petitioning spouse of an abusive U.S. citizen.

On April 5, 1999 the beneficiary filed a Form I-290B, Notice of Appeal to the Administrative Appeals Unit (AAU) from the undated Center Director's denial of the motion. On December 27, 1999 the AAU dismissed the appeal, based on results of investigations by officials in Sierra Leone in 1994 that found the divorce decree and birth certificate for the beneficiary to be fraudulent. The AAU further noted that to now assert that the divorce document is authentic without evidence of the claimed investigation or a letter from the Consulate in Freetown recanting the original 1994 findings of fraud raises questions of credibility. The AAU found that the petitioner (current beneficiary) has failed to submit credible evidence to establish that her prior marriage was legally terminated prior to the marriage of her citizen spouse and had thus failed to overcome the director's finding.

¹ The AAO observes that the motion to reopen and reconsider the Center Director's denial was dated December 29, 1998 by counsel and stamped as received by the Center Director on January 25, 1999. Although counsel only submitted one motion, the Center Director issued two decisions denying what he perceived to be two separate motions.

On May 2, 2001 the beneficiary's Form I-360 filed on March 5, 1999 was approved. On March 25, 2002 the District Director, Baltimore, Maryland issued a notice of intent to revoke the Form I-360 petition finding that the beneficiary had failed to demonstrate legal termination of a prior marriage before marrying the current spouse she claimed to be the U.S. citizen abuser. On April 1, 2003, the Center Director, Vermont Service Center revoked the beneficiary's Form I-360. On May 20, 2003, the beneficiary filed a Form I-290B, Notice of Appeal to the AAU. As the Form I-290B was filed over 33 days, it was not accepted as a properly filed appeal and was therefore treated as a motion which was denied on July 7, 2004. On August 12, 2003, the Interim District Director for Services, Baltimore, Maryland revoked the beneficiary's Form I-360.

On June 21, 2006 a Form I-140, Immigrant Petition for Alien worker was filed on behalf of the beneficiary. On May 9, 2007, the Director of the Nebraska Service Center denied the Form I-140, finding that the evidence presented as proof of legal termination of the beneficiary's prior marriage in Sierra Leone and birth certificate were determined to be fraudulent by a Service investigation in June 1994 and that on August 29, 1994, the American Consulate in Freetown, Sierra Leone found the same divorce decree and birth certificate to be forgeries. On June 7, 2007 the beneficiary filed a Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO), stating that the Director erred as a matter of law in finding the beneficiary had committed marriage fraud.

In the denial of the Form I-140 issued on May 9, 2007, the Director found that the evidence presented as proof of legal termination of the beneficiary's prior marriage in Sierra Leone and birth certificate were determined to be fraudulent by both the Service investigation and the American Consulate in Freetown, Sierra Leone. A consular memorandum included in the record dated August 29, 1994 notes that the beneficiary's divorce and birth certificates have been investigated and found to be forgeries. The purported Registrar's signature on the divorce certificate, located on the lower part of the document, is not from the High Court of Sierra Leone and [REDACTED] listed on the divorce certificate retired from the High Court in the late 1980s. The Registrar at the time of the purported divorce was [REDACTED]. The birth certificate is based on a fraudulent entry in the birth registry. The date of birth, name and sex of this delivery have been erased and altered from the original registration.

In an affidavit dated March 21, 2007, the beneficiary states her divorce decree from her prior spouse was genuine and that [REDACTED] retired in 1994. In support of her assertions, the record includes a statement dated March 22, 2000 from the Master's Office, High Court, Freetown, Government of Sierra Leone stating that the beneficiary's December 6, 1992 divorce decree is authentic. The record also includes a statement from the Master's Office, High Court, Freetown, Government of Sierra Leone dated April 25, 2003 stating that [REDACTED] retired in 1994. The record also includes a statement dated March 25, 1999 from the Embassy of Sierra Leone in Washington, DC noting that the beneficiary's divorce decree is authentic. While the AAO acknowledges these statements, it affirms its findings issued in a decision dated December 27, 1999 where the AAU dismissed the appeal, based on a finding of marriage fraud as a result of fraudulent documentation. The AAO continues to find that to assert the divorce document is authentic without evidence of the claimed investigation or a letter from the Consulate in Freetown recanting the original 1994 findings of fraud

raises questions of credibility. The evidence submitted on appeal is not sufficient to overcome the substantial and credible findings of fraud in this case.

Section 204(c) provides for the following:

Notwithstanding the provisions of subsection (b)² no petition shall be approved if:

- (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the [director] to have been entered into for the purpose of evading the immigration laws; or
- (2) the [director] has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

The regulation 8 C.F.R. § 204.2(a)(1)(ii) states in pertinent part:

Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director will deny a petition for immigrant visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien's file.

Section 212(a)(6)(c)(i) the Act states:

[Misrepresentation] IN GENERAL. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

On appeal, counsel asserts that the District Director in Baltimore, Maryland failed to show by substantive and probative evidence that the beneficiary entered into a fraudulent marriage that would subject her to section 204(c) of the Act. Additionally, counsel urges USCIS to consider the number of joint documents submitted into the record, included but not limited to the joint bank records, joint apartment leases, joint income tax returns, joint telephone bills, joint automobile insurance, photographs of the beneficiary and her spouse, and statements from family members and friends. While the AAO acknowledges this evidence, it notes that the evidence is irrelevant, as the record

² Subsection (b) of section 204 of the Act refers to preference visa petitions that are verified as true and forwarded to the State Department for issuance of a visa.

demonstrates that the beneficiary was not legally divorced at the time she married her current spouse. Thus, she could not legally enter into a valid marriage.

We find that there is substantial and probative evidence of an attempt or conspiracy by the alien and other individuals who have attempted or conspired to enter into a marriage in violation of the regulation 8 C.F.R. § 204.2(a)(1)(ii) for the purpose of evading the immigration laws. The beneficiary by submitting fraudulent documents or by conspiring with others to submit fraudulent documents that on their face presented evidence of a valid marriage where none existed as a basis of that petition, committed fraud.

Therefore, an independent review of the documentation reflects ample evidence that the beneficiary attempted to evade the immigration laws by marrying [REDACTED], and that attempt is documented in the alien's file. Thus, the director's determination that the beneficiary sought to be accorded an immediate relative or preference status as the spouse of a citizen of the United States by reason of a marriage determined by USCIS to have been entered into for the purpose of evading the immigration laws is affirmed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.